

**Town of Milton  
Planning & Zoning Commission  
Meeting Minutes  
April 17, 2007  
7:00 p.m.**

**Meeting called to order at 7:07 p.m. by Linda Rogers**

Members Present:

Louise Frey	Michael Filicko	Gene Steele
Dean Sherman	Bill Brierly	Ted Kanakos
Linda Rogers		

Others Present:

Robin Davis	Bob Kerr	John Brady
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Linda Rogers: We'll open tonight's meeting of the P & Z Commission. The first item on the agenda is not actually on the agenda. We have two new members which I would like for them to introduce themselves. They've joined, this is their first meeting. So, we have Ted Kanakos and Bill Brierly. They have just joined our commission. Everybody has their name tags but if you'd like to introduce yourselves if you don't know each other. Introductions were made.

Linda Rogers: The first item on our agenda is nomination election of a chairman and a secretary. So we'll open nominations for chairman.

Dean Sherman: I'll be bold and suggest we nominate Linda Rogers.

Louise Frey: Second it.

Linda Rogers: A motion and a second to nominate Linda Rogers. All in favor say "Aye". Opposed – None. And a secretary.

Gene Steele: Who's secretary now?

Linda Rogers: I don't know.

Louise Frey: We've never had one.

Bill Brierly: What are the duties of a secretary?

Linda Rogers: I don't know, because I write the report, I've been writing the report, I mean I don't know if that's what they do.

Robin Davis: Yes

Linda Rogers: Just a brief report of what we do.

Robin Davis: Yes, that's what they do for Board of Adjustments. The secretary takes notes and makes some sort of synopsis of the meeting and gives it to the chairperson so they can turn it in to the council.

Linda Rogers: Ok. So, do we have a nomination?

Louise Frey: I would like to nomination Ginny Weeks.

Ginny Weeks: I decline and my reason is simple, my handwriting I can't read it.

Linda Rogers: Would anyone like to take the job of secretary. If we don't have a volunteer, I guess we don't have one.

Louise Frey: I have one question, Linda. Supposing you are not able to be here, who, what do we do about having a meeting, or is the meeting cancelled?

Linda Rogers: Normally, Dean has done it, because he's the next senior person but you could...

Louise Frey: No, No. That's fine. I just never knew what the protocol was.

Dean Sherman: It's not by design it's by default.

Louise Frey: No, I just never knew what it was and I wanted to make sure that was covered. Good. Thank you.

Linda Rogers: Ok. Alright, so since we don't have any volunteers for secretary, nobody got nominated and took the position, so I'll keep writing the council's reports. So the next item on the agenda is any additions or corrections to our agenda. Does anyone have anything they need to add/change?

Gene Steele: I understand that we don't have item # 5, the minutes, we'll not be able to do anything with.

Linda Rogers: Right.

Robin Davis: And, also, I apologize for that. I left to go to PA on Thursday afternoon and I forgot to tell the receptionist to make copies and give them to you, so I apologize for that.

Louise Frey: I have one thing. I want to thank you for bringing out the Zoning Ordinance and giving us all a copy, but could we also get the Subdivision Ordinance?

Robin Davis: Yes.

Linda Rogers: Okay, anything else? If not, the agenda will go as stands. The first item on the agenda is the application of River Basin Engineering, requesting a preliminary site plan approval for the out-parcel of Milton Park Center, further identified by Sussex County Tax Map and Parcel 2-35-14.15-68.00 and for an additional building to be located on 2-35-14.15-68.01. The proposed uses are Commercial Retail. Is there anyone present on behalf of the application?

Scott Pinder (River Basin Engineering, 27423 Covered Bridge Trail, Harbeson)

Ralph Larson: I am one of the principles of the project. Typically Connie Maumburg (?) is here but he's on vacation so I was asked to fill in. Can I just mention, I guess for the new members, we got sometime last year, and I don't remember when I guess we were given concept plan approval, and then the next step would have preliminary plan application submission and here again I am just filling in so I just want to make sure I am clear too. I think we submitted around the end of January, due to, I believe, some changes in the ordinance there were some issues going on we weren't on the February agenda. For some reason, I'm not sure why, we weren't on the March agenda and now we're here in April but I am not aware of us receiving comments since the submission. That's one question I have. Should we have received comments from the engineers? I guess we're here to find out where we stand because we haven't gotten any comments back since the submission, or at least that I'm aware of.

Linda Rogers: You have comments for him?

Robin Davis: Yes, I have comments for him. I know Bob Kerr had made comments originally on the concept part.

Bob Kerr: Yes there are comments on the original parts, on the concept and kind of miscommunication I assumed without asking you if you'd send these to them and both of us thought the other was going to send it to you, so I apologize for not getting them to you before this meeting.

Ralph Larson: Okay. Can we have a few minutes to look over these?

Louise Frey: Sure.

Linda Rogers: Would you like to address your comments then you two can back and forth with them?

Ralph Larson: I'm sorry. That might be helpful.

Bob Kerr: However you want.

Linda Rogers: Yes, let's let you go down your list of comments and then you all can respond and talk about and then we'll see if you have any other questions.

Bob Kerr: Alright.

Linda Rogers: Ok? How about that?

Bob Kerr: This plan is essentially the same as what was discussed in November at the concept meeting, at that point and now it was two properties that we sort of talked about and crossed both of them at the same time. And I am not sure at this point where the Town stands with the Tidewater agreement and what sewer is or is not available, so just to let as we've talked of the concept plan, the Town does have a, or did, have a problem with sewage capacity, whether EDU's will be available for this, I can't say this evening one way or the other. The Town is in negotiations with Tidewater to take over the sewer system, that's about all I know about the status of that, so I just wanted to make sure that everyone was aware of it. There were a few things from the original construction out there that weren't completed. There was supposed to be some privacy fencing along Sussex County Rd 22B. At the concept, or at some point, there was some questions by the commission and Town over the status of all the landscaping that was out there. I have not checked it since. We talked about it at the concept meeting to see. I know there were some changes made sometime in the fall to some of the landscaping but I am not sure whether that did complete everything that needs to be done out there. There are a lot more dumpsters out there than were shown on the original plan. None of the dumpsters, either the ones shown on the plan or the ones that have shown up since, are fixed. They kind of sit out there in the parking lot or behind the building, but they are not fenced as shown on the site plan. Moving on to Parcel A.

Ralph Larson: Can I address that, just for a second? I'll check on it. Is 22B the road behind where the storm water pond is?

Bob Kerr: Yes, behind Happy Harry's.

Ralph Larson: The landscaping, we have done some, but if you remember, we've incorporated the irrigation into the new plans.

Bob Kerr: Actually, there's nothing on the plans saying that, but...

Ralph Larson: It's not on the landscape plan?

Bob Kerr: No. There's no notes saying that there's landscaping.

Ralph Larson: I apologize. It should be on there, I'll make sure that's on there. That should have been part of the landscaping plan. And, on the dumpster, and I'm not making excuses, some of that might be tenants adding their own dumpsters. I'll look into that and we'll deal with the dumpsters. Could be tenants are adding dumpsters where maybe they shouldn't be. The dumpster's need to be fenced, that ain't right.

Linda Rogers: Wasn't there supposed to be a privacy fence all the way along 22B when the original one was done.

Bob Kerr: Scott, if I could use your drawing of the site plan it would help me for a minute.

Scott Pinder: Sure.

Bob Kerr: I know that there was supposed to be a privacy fence along this portion of 22B. I cannot remember, and I didn't bring my set of drawings tonight, but there may have been a requirement for a privacy fence along this section.

Linda Rogers: I think they have it.

Robin Davis: I don't think so Bob. I think it was just trees along where you just came from.

Bob Kerr: While I'm here, and have your attention, one of the things...

Linda Rogers: But it was to be privacy type, not just fence.

Bob Kerr: It was to be a 5 to 6' high solid hedge...

Linda Rogers: Hedgerow type thing, correct?

Scott Pinder: Not a hedgerow, it was supposed to be a fence, a privacy fence, but then the landscaping was just, was not a hedge, just trees.

Linda Rogers: Right, but there was supposed to be a solid one there too to hide everything that was behind those shopping stores, correct?

Scott Pinder: In this portion?

Linda Rogers: I thought it was all the way to Happy Harry's.

Scott Pinder: I don't think that's, I don't believe that the drawing that was approved indicated it was to go the entire length of the property.

Linda Rogers: Not the entire length but only to Happy Harry's, not all the way down by the pond, but I thought it was supposed to stop at Happy Harry's.

Scott Pinder: I believe its only where these parking places are located.

Robin Davis: Because I think the dumpster... The only authorized dumpster is the one right there and it's supposed to have been screened in. So that's why I think...

Scott Pinder: This dumpster was supposed to be the only one back here and it was supposed to have separate fence around it.

Louise Frey: Apparently that's not.

Scott Pinder: No, there's none there and there's several dumpsters over this area and I don't want to say where else they might be.

Robin Davis: The dumpsters are in the wrong locations.

Linda Rogers: Well, normally we let Bob and them finish their comments and then we come back with questions unless it's pertinent to exactly what their discussion is right now. So do you have something that you need to add or question while we are at this point?

Bill: It goes to the screening or fencing that was being discussed, along that road which is also called Morris Avenue. When you are going down Morris Avenue, the unsightliness of the back of the stores and the dumpsters could also be modified and toned down if there was privacy fencing and/or tall shrubbery all along the storm water management pond as well, and I just thought that should also be considered.

Linda Rogers: I am not sure we can require that.

Robin Davis: We can't require that.

Ralph Larson: What I'd like to do though is find out what we...what I'd like to do is discuss what we didn't get done. I wasn't involved in the beginning of this project, so let me just make sure I'm clear of what needs to be caught first.

Linda Rogers: Right. We can't necessarily require them to add anything to the original recorded plot, so even though we could suggest to them it would be nice if you went ahead and did this, we can't require it because that's a part of the original plot. The only thing we can put stipulations on at the present time is the front two parcels that we're reviewing. However, he's being told about the things that didn't actually get completed.

Louise Frey: May I ask a question? Since one of these buildings is on the parcel in discussion, it's on parcel A, doesn't that open up the whole thing again?

Linda Rogers: Mr. Brady, you'll have to answer.

John Brady Brady: Short answer. No. There's a long answer saying that remember this is here tonight for preliminary site plan approval. They have to have the items that were previously agreed to in the plot. They can add to but that does not necessarily re-open the whole thing for any major changes. But if there's something that you bring your attention to them that they failed to do previously, then this is the time where between preliminary site plan approval and final site plan approval, those items can be addressed, and I believe it's been pointed out a couple of deficiencies from what was previously done but there has also been a change in the project from before. They came for a conceptual twice. The first conceptual you outright rejected. The second conceptual they came back with some of the items and this is now the time when we go through that real long checklist for preliminary.

Louise Frey: But if they haven't completed the conceptual items that we asked for, is this, we can still hear this?

John Brady: Well, if they haven't completed the conceptual items, yes you can talk to them about that. What I am saying was this is already, they have a recorded plat already, and there were some conditions placed on what was previously recorded for the property and at that point as what we're talking about and that's where the items are coming up as I believe with regard to the fence and the landscaping. If I understand what we're talking about, there was a concern at the last two times I've been here where this project has come up; that the landscaping on the island and all parts of both Parcels A & B, it was previously agreed to as part of the site plan that was approved. Because of the way it was stated in the site plan, they did what they minimally had to do to comply with. That's why when that comes back now for a preliminary site plan where they are going in for a change, those changes can be noted and they can be asked to comply, because they're asking to come back and focus on those areas. But, specifically, if you're talking about changing the items from the previous, you get my answer?

Louise Frey: Yes I do.

John Brady: Ok. Thank you.

Michael Filicko: So, Mr. Brady, could we require that irrigation be provided along all the landscaping or is it just on the parcel that's coming before us tonight?

John Brady: Before you tonight, this has been subdivided, Parcel A & Parcel B. It's now two separate parcels as I understand it. As part of what's coming tonight, you can require for Parcel A and that what Bob Kerr put in his number 4 about the complete the landscaping. However, I don't think as I review the preliminary site plan, irrigation is a

topic you can require tonight, because they've already recorded it and it has already been approved without irrigation being required.

Linda Rogers: What did you say was going to be irrigated that you thought was left out of the plans or that you intended to put in the plans.

Ralph Larson: We had talked about where the new part that was submitted.

Linda Rogers: Along 5 & 16, that parcel?

Ralph Larson: Along 5 & 16 where the berm areas are.

Linda Rogers: Just that part?

Ralph Larson: That is what we had discussed the last time in concept plan.

Bob Kerr: I thought that there was discussion that the irrigation along 5 would extend all the way down to the existing entrance so that, because you are adding some new landscaping in that area.

Scott Pinder: That's what we're showing.

Bob Kerr: That was the intent?

Bob Kerr: That might have been, you know, that might be the case. But I know we weren't getting into all the islands and the whole rest of the property.

John Brady: And that can be part of an approval group, the preliminary plan tonight that you are doing for area A.

Linda Rogers: So it would extend from the entrance that is on Route 16 around to the entrance that's on Route 5? That's what you're talking about and that's what everyone is referring to so we're on the same page?

Bob Kerr: Yes.

Louise Frey: No.

Linda Rogers: No?

Louise Frey: I'm just confused on the, because if you go back into the minutes it says things where we talked about the extent of the part of phase one was to require a fence along 22B behind Happy Harry's. That's Bob speaking. It was supposed to have a solid wood fence that hasn't been installed. You know, there were different things in here that we wanted to see more detail. For example, I don't want to be held to the 2' berm because we asked them for a better landscaping plan. We didn't approve a 2' berm and here the fencing was supposed to be that. And they were supposed to clean up dumpsters. And you're fencing all along the back and the curbing along the side; that was mentioned. So those things should be in the preliminary site plan that we get tonight.

Linda Rogers: If the landscaping plan was approved and recorded, can we make them change now? I mean I understand what we said at the conceptual hearing about extending the fence and that they haven't complied with what they were supposed to and that the landscaping wasn't what we expected. I remember all that and it's in the minutes, but I mean as far as making them change from a 2' to a 4' or a 6' or whatever at this point, is that something we can do now or can it only be required on that front parcel since that's complete new construction?

Bob Kerr: Can I throw out a question on top of Linda's question so it can be more confusing?

John Brady: Sure.

Bob Kerr: They are showing along 22B additional parking places to be constructed - 13 additional parking places to be constructed behind Happy Harry's. Along the storm water pond they are showing 5 new parking places and I don't have the exact count but

they are showing existing parking places that do not exist. They were approved as part of the Parcel B I believe, when both A & B were coming before you and there was a restaurant involved over top of the storm water pond. The restaurant went away but the parking places that were shown to be part of it were never constructed. So...

Linda Rogers: Are they needed to be there to comply with the parking requirements?

Bob Kerr: Yes.

Linda Rogers: With what's there?

Bob Kerr: With what's there they are needed to comply. One of the comments I have, and I will get to it in a second, but it was basically to discuss with the developer possibly a relaxation of the number of parking places, but to get fencing and/or landscaping where you would like to have it.

John Brady: What was previously discussed and you are talking about the minutes, Miss Weeks, which meeting.

Ginny Weeks: Of the conceptual plan.

John Brady: The conceptual plan. Its conceptual plan was November of 2006. The conceptual plan is just a conceptual plan. It means the commission says okay, move forward to a preliminary site plan. At this, that is not what is recorded and currently in place. The recorded plat currently in place for the building is currently in place that is on Parcel A, does not have the specificity as to the landscaping or has no reference to irrigation as I recall when I looked at this. Now that they are asking to build a new one-story retail building, building #2, on part of Parcel A, and relocate some parking spots as a result of that, as part of this, you can re-open the landscaping, but I do not see where, when there's been previously a lessee developer agrees, I don't see where in the previously existing you can require irrigation. That is what I was trying to say. That's my concern.

Ginny Weeks: I remember, it's not in here, but I remember specifically that irrigation was discussed.

John Brady: And it may have been discussed, but the caveat is in the preliminary site plan and our requirements we have landscaping. We don't have a requirement, as I recall, for irrigation. Parcel A, when it was previously approved by P & Z, for the building of the Happy Harry's, required landscaping that did not require irrigation.

Linda Rogers: Do we have the authority to require irrigation?

John Brady: I don't see where you have the authority to require irrigation absent of the change to the zoning regulations. Now, if the developer wishes to do because, understanding the code enforcement office can clearly go out and site for not maintaining the landscaping, and for the dumpsters that are in the wrong area, as a way to prevent that violation under the currently approved Parcel A, then that may be a trade-off that they voluntarily say they will irrigate this part as part of that. So that may be the way you resolve it. But what I am saying is this is not a brand new thing coming in front of the commission, and until that zoning update is done, where irrigation is part of it, you can't require them. But if they offer it, then you may wish to accept it.

Ginny Weeks: Can they work with that (unintelligible)?

Bob Kerr: Yes, they did.

Louise Frey: They did, they offered it.

John Brady: At the conceptual plan they offered it, but a concept plan doesn't; it's not binding.

Linda Rogers: So you are offering to put irrigation from the entrance on 16 to the entrance on 5. Is this?

Scott Pinder: Just to clarify. It was suggested, or it was recommended, that we put irrigation in at one of the comments, and we suggested that we would oblige that comment in an effort to work with the Town things...

John Brady: It's currently not required and because its...

Louise Frey: I think that the reason irrigation was brought up in that it's so important is that such an outstanding job on the maintenance of the landscaping out there has been done. It's a mess and things are dead and dying and we suggested that perhaps irrigation would help and you said yes.

Scott Pinder: We're not opposed to irrigation but again we were trying to work with the town.

Linda Rogers: The boundary of what you were talking about putting it is from the entrance on 5 to the entrance on 16 is where you're referring to.

Ralph Larson: Which is where there would be all new landscaping.

Linda Rogers: Exactly and that is where you are intending to put irrigation, correct?

Ralph Larson: I thought that would be on the landscaping plan. It should have been.

John Brady: And I don't see clearly on the plan...

Ralph Larson: And look, overall on the whole project there's been from my understanding a lot of anxiety and a lot of angst over this whole project over the years. I am here to try to work with everybody and this needs to, it's here, the center's there and we got to make it better and an example is this dumpster back here in the back. Here again, I wasn't aware of this in the beginning, I wasn't involved, there's a location for one dumpster here. There's no way this many tenants can handle with one dumpster, so maybe we need to work together a little bit on that too. Maybe I need to get them to get some more dumpster spaces in there and screen those and maybe look how we handle this back here in exchange lightening up on the parking requirement or something like that like Bob Kerr mentioned. We're happy to work with you on this, but there's no reason for us to kind of being in a battle over this. The center is here and we'd like to make it work too.

Linda Rogers: Right.

Ralph Larson: And we've been going on with this for quite a long time, there's a lot of money in it, I hear your comment about the landscaping, I'm sure it comes up every month that there's a meeting about this.

Ginny Weeks: And in between.

Ralph Larson: And in between. My company has just taken over the property management of this in the last year so we'll get on top of that.

Ginny Weeks: There are also some dumpsters on the side at Food Lion that are atrocious.

Ralph Larson: But, the fact of reality is this many tenants can handle one dumpster; one dumpsters' just not going to handle that. So those are the kinds of things, you know, we'll work with you on, and we'll look at that. I think you would agree, there's got to be more than one dumpster back there. Happy Harry's requires two dumpsters themselves. So those are the kinds of things maybe we need to take a look at, work through this and make this work for everybody, because the test worked for the tenants too. So, we are



willing to work with you to your suggestion, Bob, maybe we don't need all that parking in the back, I don't know, would that be a waiver I guess or something? In exchange for.. Bob Kerr: It would take away providing the commission to reduce the number of parking spaces.

Ralph Larson: Maybe in exchange we get room for more dumpsters and we screen that in?

Scott Pinder: When we do more screening on the back.

Ralph Larson: I mean, we're an open book.

Gene Steele: But the situation that we have is that at the last meeting in November they said the situation would be taken care of, and here we are, stating here nothing has been taken care of on your end.

Scott Pinder: Actually, from the last meeting there has been some landscaping, there's been cold spin on the lights...

Gene Steele: My personal opinion on that, and it's my opinion only, is that the reason you did that was to make you look better when coming in front of us again. That's my opinion.

Scott Pinder: I mean, that's a good thing.

Ralph Larson: I mean, that time of year, you can't do a whole lot of landscaping in the winter time. We'll take a look at that; that's why I'm here, I'm telling you, we'll take a look at that. I know we did shields on the lighting. There really wasn't much we could do in December and January regarding the property as far as landscaping goes. As far as the fence, I wasn't aware where a fence goes. I mean, I'll look at that if it's required, we'll put it on there, if that's what's on the plan that what will be on it. As far as going further with it, maybe we can discuss that regarding the dumpster issue.

Bob Kerr: You know, we're just here to work with you. We're trying to work with this.

Ralph Larson: Back to number 4, I'll look at these things we talked about Bob Kerr, your comments and I'll look at these items on number 4. I don't want to take up the whole night for you all so if you want to go through some more of these then...

Bob Kerr: For Parcel A, my comments on that, it was discussed a couple of times during the various concept meetings that the buildings would have the same exterior finish on four sides but there's nothing on the drawings that gives us the assurance that one won't be a block wall and the other side be a split face.

Scott Pinder: Those architectural details will be a part of the final submission, but we actually have a sketch...

Bob Kerr: If I could just add something, architectural details are really not something the commission looks at or has the authority to do a whole lot with. A note on this drawing that the finish will be typically the same on all sides. One of the things that kind of came up as a surprise before was that the west wall of the Food Lion is a block wall; just a regular concrete block wall where there addition next to the Food Lion on the west side used split face. And I guess the idea at this point is if the Food Lion ever expands, it'll be finished up in split face. But in the meantime, as you come in Route 5, you see a big concrete block wall and so if per chance building 2 was going to have a east front, then we don't want a plain back wall, that would face Route 5, of block.

Linda Rogers: Actually, you told us at the last meeting, I believe, it would have literally 2 fronts.

Scott Pinder: Yes, and it will

Ralph Larson: Yes.

Linda Rogers: It would have a front on 5 and then a front within the parking lot.

Dean Sherman: And my concern is that nothing that was said at the last meeting really counts it's what's on the preliminary.

Linda Rogers: Right.

Scott Pinder: That's just not...

Ralph Larson: If I can just address that, I mean, we would have the exterior materials but we weren't planning on having glass all the way down both the front and the back. It would be like a bowed glass on the once side, the backside, facing the parking lot. Kind of like a...it would be recessed panels that would give it an architectural look; it's not really glass, you're not going to see into it.

Ginny Weeks: You mean like what the library has?

Scott Pinder: Yes, in what I believe, it just kind of breaks it up, it's not a straight wall, there's some...

Ralph Larson: Right. There's recessed areas where there would be like a window.

Ginny Weeks: Like bricked up windows?

Ralph Larson: It's not a very deep building otherwise you're just looking right through the building. But the materials themselves are the same on the front and back and the sides.

Ginny Weeks: We'll have to do some hiding of the landscape.

Bob Kerr: Well you are going to have a driveway, a road, all the way around it also, so there's not a whole lot of landscaping that can hide it. It's a fire lane situation on the one side. And because of the fire lane, bumper blocks should be provided so that if somebody pulls into those parking places on the west side of that building their bumper isn't sticking out into the travel lane. This is kind of the long one where we get into parking. 378 are required and there will be 338 parking places after the new building is put in. There's 18 new spaces shown and 22 are shown that are existing but they really don't exist now. There could be approximately 30 spaces around the storm water pond but there would still, and there's 13 shown behind the Happy Harry's and the Dollar Store. You may, and that takes out the existing berm and some of the landscaping that's behind Happy Harry's, so, whether you want to have landscaping back there, or parking spaces or privacy fence the whole length and if you have a privacy fence the whole length, maybe not require dumpsters to be fences because that's really a kind of utility area back there at that point, if it comes to maybe where employees are parking, but the Gene Steeleral public really isn't going back there except behind Happy Harry's because of the drive-through. But the strip section to the south of the Dollar Gene Steeleral area, or to the left, is really just an unloading, utility, employee area, but that would require you to reduce the number of parking places by approximately 10 plots. An, as we discussed at the concept meeting, if the Food Lion ever expands, there's going to be a need for more parking places that time because this site is kind of full. I don't know that there's room to stick in another parking place if Food Lion ever expanded into that area.

Ginny Weeks: Well maybe it can't be expanded.

Bob Kerr: Yeah, then it may not be able to without a waiver of parking.

Scott Pinder: Actually if I may, with that note, is there a particular spokesperson we can initiate this dialog with outside of the meeting to come up with actually what we want to incorporate?

Bob Kerr: I think that would have to be decided this evening by the commission if they wish to waive it. If they do not wish to waive it, or change some of the requirements, it'll happen this evening or not. It's not something that Robin Davis or I decide outside this meeting. It's the commission that would make that decision.

Scott Pinder: Ok, but in terms of the exact specifics of the amount fencing or type of trees or...

Bob Kerr: Would be decided by this commission.

Scott Pinder: Tonight?

Bob Kerr: Tonight, if they elect to do so.

Scott Pinder: Ok.

John Brady: When he says tonight, let me define tonight. Tonight the commission has to accept it, reject it or table it for further update and modifications. You have brought up further updated modifications so that may be something the commission says hey we're at a point to some things we want to look at, we'd like to table this to the next meeting and you could bring back some revised things and address a, b, c, d, e, f, g, & h, and that is an option in the inherent ant powers of the commission to do after your presentation is done tonight. You also have the right to say hey, we feel your pain and you need to table it for a month and then the commission would not have anything to vote on tonight with regard to your application. You would have the right to update it and it would have to be back on the agenda for next month. That's what I tell people is the definition of tonight.

Ralph Larson: And we are willing to update it and come back, but with some direction, particularly regarding the parking issue, I guess. That's going to be a big issue and I don't want to eliminate parking and come back and say you're out of whack. Bob Kerr, if you can clarify for me, the parking we show now proposed, would the concept plan...

John Brady: Now remember, we are talking Parcel A versus Parcel B, because this is two parcels. The Parcel A includes the Food Lion, the Happy Harry's, and this new building. Parcel B is only one spot out of compliance, and there looks like there is enough space that the west of Parcel B, but because it's now been subdivided, we have to look at the parking per parcel, and so that's when you start to look at the spots. You have to remember, you are addressing the parking in Parcel A with regard to the new building and looking at the existing buildings there, the Food Lion building, and the Happy Harry's building, this is the best way to define the two buildings with Parcel A, I believe, right Robin?

Robin Davis: Yes, Happy Harry's is the one section and then Food Lion is the other.

John Brady: And then Parcel B is what is being proposed tonight and when Bob gets it, it's only one spot out of whack. It looks like it will be easy to fix.

Ralph Larson: In regard to Parcel A.

Bob Kerr: With regard to Parcel A, it looks like 30 spaces could be put along the existing storm water pond and I eliminated a couple of the handicap spaces in that area because they are so far from the stores. By eliminating those, and moving things a little bit, I think you can fit 30 in there. And then instead of putting 13 behind the store, I believe it's an additional 10 that would be needed to actually meet the minimum parking requirement. But if...

Ralph Larson: That would not cover the Food Lion expansion now?

Bob Kerr: But that would not cover the Food Lion Expansion. Additional parking places would have to be (unintelligible).

Ginny Weeks: Bob, would you explain to me please how 30 parking spots are going to fit in there? They're showing 22.

Bob Kerr: They are showing 22 up near the, closer to Parcel B which is on the right hand side. You could probably get a couple more there. Take out the handicap isle where the hash marks are shown and the ones coming around the corner could be tightened up a little bit and how to playing with it....

Ginny Weeks: How important is that corner to storm water run-off? Should that be blocked with cars parked there?

Bob Kerr: There's a flat enough area that with proper grading it should not be, storm water drainage should not be an issue if it's engineered properly but it could be done.

John Brady: You are using 9 x 18 as the property structure?

Bob Kerr: 10 x 20

John Brady: 10 x 20?

Bob Kerr: In accordance with the code. There was discussion about providing curbing along 16 and Route 5, and that has been shown. They show no new signs but they have shown the location of the existing signs. There's no information on the height of the building; we've been told its one story but...

Scott Pinder: Two

Bob Kerr: I don't believe it's actually called out that its 10' or 12' height.

Scott Pinder: It doesn't say, yea, it just says one story. Ok

Ginny Weeks: How come the dimensions of the building aren't on here?

Bob Kerr: The square footage is provided but actual dimensions are not.

Scott Pinder: Ok.

Bob Kerr: The lighting plan shows, there is a lighting plan that's been submitted. It's recommended that shields similar to what have been recently installed be used on both parcels and that the luminaries shown on the west side of the building are the wall mounted ones, I believe, and they sometimes do throw and awful lot straight out as opposed to more down.

Ralph Larson: The wall packs.

Bob Kerr: Yes, the wall packs.

Ralph Larson: We can put shields on them, it's no problem.

Bob Kerr: And then there is a dumpster located at the south end of the building for a dumpster area but there's no details on fencing, how it's going to be fenced or hidden or landscaped or what's going to happen to it. And then we've talked about the irrigation system they indicated to us at the concept that it was going to be provided with an irrigation system in the new areas but there's no note on the site plans or landscaping plans. Any questions on Parcel A, or keep on going? Parcel B, they're showing one 12,457 sq. ft. retail building. The building requires 63 spaces, there are 62 shown.

There's room on the southwest corner of the building to add one more parking space for the total of 63. Where the cars park up against the building, it's a 4' wide sidewalk so a bumper block should be provided to keep the bumper from hanging over the sidewalk, and that would also prevent heavy damage; without the bumper block handicap access would be difficult along the side. At the intersection of 16 & 5, there's now sidewalks on both roads but you can't get from the sidewalk to Parcel B without going all the way down to the main entrance off of 16, so to have something that comes through the bermed area into the parking lot somehow so that people aren't just walking up and over the grass.

Ralph Larson: Somewhere right off the walkway into the lot?

Bob Kerr: Yes, some place near the intersection, wherever works. We talked about the curb. There is a sidewalk on the entrance road along the bank, whether you want to also require sidewalk on the other side. The Town ordinance requires sidewalks along the Town-owned streets but it doesn't address a private entrance such as this. There is a sidewalk on one side but for your choice it would reduce the amount of grass and potential area for landscaping if the sidewalks were put there.

Ginny Weeks: On which side is this?

Bob Kerr: On the, it's the east side of the site right next to the entrance road that cuts between the proposed entrance, or the entrance and the bank. Again, the signs have been shown but no new signs are shown other than for traffic control. A lighting plan has been provided, recommend that the, it's the same lights that are there now, but that they be provided with the shields such as they've already put on some of the existing lights; again no information on the building height; nothing on the screening or fencing of dumpsters. Again, the exterior finishes of the building says all four sides will kind of be visible through the site and the irrigation note.

Ralph Larson: What I'd like to do if we could, we'll address all these issues, try to get back here next month. I guess I am looking for a little bit of direction as to possibilities and flexibility on the parking. This dumpster issue is going to be a problem, I mean, to figure out a way to deal with that. There's no way if I get down to with just one dumpster for these tenants, obviously that's what the reigning problem, I guess the tents are out getting dumpster, getting their own dumpsters.

Bob Kerr: Robin, do you have any idea how many are back there? Isn't there one for each of the stores?

Robin Davis: I know Happy Harry's has 2, the Dollar Store probably has 2, there's probably 6 back there in that back, on that side.

Ralph Larson: Happy Harry's always had 2 because they recycle and then they have trash, so that's one thing, and the Dollar Store, possibly the same thing.

Robin Davis: Yes. I know there's probably at least 6 back there.

Linda Rogers: Does anyone ever park back there?

Robin Davis: No, except maybe employees. There might be a couple employees' cars back there, when I go back there.

John Brady: There's employee access to the buildings from the backside.

Robin Davis: And like Bob said, all the utilities are back there. I mean, the gas and everything is back behind the buildings.

Bob Kerr: All the deliveries are made back there.

Robin Davis: Yes.

Ginny Weeks: Are we going to discuss the landscaping plan at all?

Linda Rogers: What?

Ginny Weeks: Will we have an opportunity to discuss the landscaping?

Linda Rogers: What do you want to discuss about it? I mean, we need to deal with issues one at a time. First we need to deal with the back of this, the fencing, and alleviating the parking and then we'll get...

Ginny Weeks: Absolutely. I just wanted to make sure that the landscaping plan would be addressed tonight.

Linda Rogers: Tonight or the next time they come, one way or the other it'll be addressed.

Ginny Weeks: I would prefer tonight so when they come in, we're not sending them away again.

Linda Rogers: Okay, so let's deal with the parking issue first. We're behind Happy Harry's right now.

Michael Filicko: Linda, may I just add a few comments in regards, first of all with the parking? There are an awful lot of empty parking spaces there, always. So as far as the parking issue goes, it's my opinion, and my opinion only, that some of them can be waived. I mean it's just to me, it looks like nothing but asphalt out there with very few cars. Okay? So, that's how I feel about the parking. And you two gentlemen, I appreciate, you seem to be coming to us in good faith and I certainly as a commission appreciate that. And as she said that this plaza is already there, it's not something that, and correct me if I'm wrong Linda, we did not vote on this plaza to be placed there as it is now. We were overturned by Mayor and Council. So, we didn't have a say-so, is that correct?

Linda Rogers: The Mayor and Council approved it being a C1 parcel without the recommendation of approval from Planning and Zoning. As far as the site plan, we did review the site plan, we did suggest some things that ended up not being on the current plot that was recorded which you can assume either was just eliminated by intention by Council or it just happened. But, you know, at the original time of request for annexation and the zoning of Commercial, P & Z did recommend highly that it not be approved. But it's here so we have to...

Michael Filicko: Right, it is here, so we have to address it.

Linda Rogers: Right.

Michael Filicko: Now the existing landscaping and the new landscaping that comes in, as far as irrigation goes, that's just one small aspect of landscaping. There needs to be a maintenance crew/staff that goes out there and takes care of things, and that's, I don't think that's ever been done. When a tree dies, it may be replaced, but in the middle of the summer there isn't anything there but crabgrass and it's very, very unattractive. Not only the landscaping but the dumpsters, the building itself, and when Mr. Zimmerman was here, and I confronted him about these issues, his comment was that I believe he said, he's not here for architectural review because we did not, at that time, and I don't know if we do now, have a committee or a group that can review the architecture of a building that's going in. But, whatever you do, whatever we approve, I think that the existing issues need to be taken care of before we can move forward with anything else. That's only my opinion. I don't know legally, Mr. Brady, if I have, if we can do that.

John Brady: You have no power as you correctly surmised over architectural review.

Michael Filicko: Ok.

John Brady: In compliance with the current plan is in the hand of the code enforcement office of P & Z. You have no requirement under the current zoning laws regarding irrigation. That is something that when the revisions as one of the things that they're looking at, that may be something you wish to address in commercial properties but it would not have a grandfather affect. You understand, and we talked about it in length a few minutes ago, there's certain things you can do. You can waive the parking spots. If the developer says, and there's no requirement under our current zoning law, regarding

the maintenance unfortunately. All they are required to do is make it look beautiful at the time the final plan approval comes in and it is inspected. However, and you cannot require them to maintain a landscape or a grass cutting firm; that comes under the code enforcement officer. You can put stipulations on there, and you have enough held in other communities regarding that the landscaping must be maintained at a minimum level. Since they are coming in for both Parcel A and Parcel B, that's where you can do it, you can't require irrigation, but you can't just let it turn into barren waste land either, and so you can say it needs to be maintained. The problem is you have to have details to the understanding of exactly what you are expecting, and we have some requirements, but also you have to have an objective standard. It can't be subjective. What looks good to one person may look like crap to somebody else. Please don't come look at my beautiful lawn. My home lawn is not beautiful. What I do is I put grass seed out each year and I try. However, I've got two neighbors beside me that have competition to have the greenest lawn and I'm have tempted to put concrete in my personal lawn and paint it green so I can have a greener place. That's a subjective standard. For enforcement purposes, you need an objective standard and that's where is says that, you talk about there must be plantings, the 2' berms, things like that, but this is what they are asking you now is, what are the trade offs that we can do, and I believe the commission has said he is in favor of waiving a certain number of parking if you maintain the landscape at a better condition understanding you just came in and you've been property manager less than a year and it has been done previously. I believe other commissioners are looking like they're frothing to comment. So I give it back to the chair.

Gene Steele: How many parking spaces do you think we have to give up? Specifically you talked originally 10.

John Brady: In Parcel A, none in Parcel B.

Gene Steele: But, behind where the dumpsters are now, does that include giving up spaces for those extra dumpsters?

Scott Pinder: That is where the spaces would be given up, yeah, the 10 spaces behind there and what I'm hearing is that it would be a trade off of parking spaces for additional landscaping behind there and fencing. So you get trees with no reduced parking requirement, trees and fencing buffer.

Gene Steele: I would say the trade off just on those two things. As Mr. Kerr stated we needed the building height, the measurements of the building, everything on the plans so we can because the only record we have to go to is, when we want enforcement, is what we have in black and white, it's not on the plan; it can't be enforced by the code enforcement officer.

Scott Pinder: But we are talking about this issue behind the building, the trade off with the parking spaces behind the building. We've already noted that we are going to add the building height, the dimensions that will be on the next submission. But we need to decide tonight is what trade offs we can agree on tonight, so that we can show the correct thing; show it correctly on the next submission.

Linda Rogers: So, right now we need to focus behind Happy Harry's, the Dollar Store and whatever else is over there, Subway. How many dumpsters are actually going to be placed there, where the fencing is going to be, what type of landscaping there'll be and if that area resolved, if we're going to allow any waiver of the parking, and then we can move around to the front and take care of that area.

Louise Frey: I am not willing to waive the parking just on the Happy Harry's or the placement of the dumpsters. This is either a whole package or its not...

Linda Rogers: We have to do it by areas, I mean or they could come...

John Brady: You have to do by Parcel A and Parcel B.

Louise Frey: Right, but I'm talking about we either look at all of Parcel A including the landscaping for Parcel A that's along Route 5...

Linda Rogers: But I'm talking about doing it in sections with it because it's a big parcel.

Louise Frey: No.

Linda Rogers: Okay, what do you want behind Happy Harry's? Let's establish what you want there, and then we'll move to the front and establish what you want there.

Louise Frey: Right, but giving, deciding, and if they should agree next time they come in to do what we want behind Happy Harry's, does not release the parking behind Happy Harry's. It has to be a complete picture of Parcel A before any parking is waived, is how I feel. I am not going to trade parking for dumpsters.

Linda Rogers: Then how are you going to have your dumpsters?

Louise Frey: That's their problem.

Linda Rogers: It will be our problem if we don't have a place for it.

Ralph Larson: The only other option is to leave the parking there. We're trying to work with you. We could leave the parking there and have a...

Louise Frey: I understand that. I want to work with you but I don't want to trade parking for dumpsters. There's fencing, there's landscaping, I want to know what's going to happen over here along Route 5 in Parcel A.

Scott Pinder: That is what I just said, we were going to be trading parking for additional landscaping, additional fencing...

Louise Frey: It's not just behind Happy Harry's, also along Route 5 also on Parcel A.

Scott Pinder: We're showing new landscaping.

Ralph Larson: We're showing the landscaping plan and it's all on parcel A.

Scott Pinder: Now the irrigation is another part of the trade off if we are going to consider the entire package.

Dean Sherman: Mr. Brady, I really don't have a dog in this fight because if you look at the record, I voted against the conceptual, but would it make sense to form an Ad-Hoc committee from this group to meet with the applicant to try and work out the details on the new phase and the old phase and get a comprehensive list because the way this things starting now it's going to go all night and we're going to leave here with nothing, and then come back and, have maybe even do that between now and the next meeting. I'm sure that if we put 3 or 4 people from this group together, the rest of us will be fine with it. And there's plenty of parking out there to barter with.

John Brady: Let me also tell you something you may not want to hear. When I reviewed our current ordinances, it's technically today, April 17, 2007, not illegal to put a dumpster in a parking spot. That seems to be a slight oversight in the current zoning code. So they could put the 10 parking spots back there and put 10 dumpsters back there and be in compliance.

Dean Sherman: Well, they indicate they want to work with the town to get things moving.

John Brady: Remember, I don't sugarcoat things. I read the law and I tell it like it is and I tell you where we need to fix them.



Louise Frey: But how could it be a parking spot then if nobody can park in it?

John Brady: Because there is no enforcement requirement to go out there and see how many spots. In regard to your, Mr. Sherman, request to do an Ad-Hoc committee, I haven't seen where they've done one before and that concerns me with that precedent, but you have the right since this is your re-organization meeting to do that, and if somebody makes a motion and seconds it to have the 3 members meet before the revised preliminary plan is done; that's not illegal.

Dean Sherman: Well, there's just a portion of the committee that are on top of some of the details. Again, I'm not, I'll be honest about because I believe that the problems, my feeling is the problems that we experience with the initial phase by approving an expansion to this original plan, we're just going to increase more problems unless something takes a dramatic turn. And if we've got a new party whose assignment is to try and clean this project up and be a better amenity for the community, then maybe we need to take that turn. And again, I can think of Mr. Steele, Ms. Weeks, maybe one of the newbie's, certainly Bob, who has all the technical stuff, get together, have a workshop, get through all the old stuff that supposedly has not been done, gets through the new stuff which wants to be done, barter with the parking, there's a tremendous amount of parking out there, and just get what everybody wants. Everybody wants something, just get what everybody wants, get what everybody needs and just let's move on, because the guy has thrown things out there, so you get into a stalemate if you sit here and complain about everything that is wrong out here but you're not willing to move forward to correct it. Nothing is ever going to happen here.

John Brady: That would be technically okay. The only thing is you would have to notice it to the public, there would have to be an agenda posted 7 days prior. It would have to comply with the FOIA requirement as a sub-committee of P & Z and you could add specific purpose.

Louise Frey: Could it be termed a workshop?

John Brady: It could be termed a workshop but it would still have to have public notice and that may be a way because you have asked...

Gene Steele: That's, in fact, what I was trying to get at.

John Brady: You asked to try and do something with a smaller group and that could be a way because technically you are right. The town engineer and the town solicitor nor the project manager has the power to negotiate, only to advise you as what the ordinance says and if you are in compliance or not, but having 3 members of the committee there can, sort of the ones that have concerns, be funneled to those members and they can work and still be allowed to participate when it came back in for voting.

Dean Sherman: That makes a lot of sense.

Bob Kerr: Historically, the entire commission has as a group doesn't function very well as a committee, because there's too many and again we've done this several times in the past, I'm afraid you're going to leave here and you're going to, like the last couple times, you're going to say, I think you are going to be unclear exactly what you need to bring back at the next meeting. And we'll have to do this all again.

Ralph Larson: I understand and I've done this before in other locales and sometimes it's been productive and sometimes it hasn't. I mean, I am willing to try that, but, you know, it's one of these that time is of the essence and I'm not trying to push time but here we

are, it was November, now its April. If we can do this relatively quickly and have a good dialog I am fine with that.

Dean Sherman: I think a path wrong, you'll probably going to be another year; you'll still be here still in a stalemate, to be honest with you, because there are a tremendous amount of things, in all honesty, there is a tremendous amount of issues out there in specifics that need to be addressed and I don't think we have time for it tonight. So you are going to have to do something, so you'll have to come back next month and we're going to say we don't have to do it all that night. So I don't know how long this will drag on.

Scott Pinder: That's what I was trying to get at when your suggestion, actually meeting outside of this, but what would also help is if these concerns could get to one list, like if the concerns from the other members would get on the comments generated either, I don't know if it has to come from Bob or just come from the committee, but these are all of the committees comments then we have a concise list not just a list from Bob.

Dean Sherman: Why don't you do the meeting and just read the list at the meeting? You go back, incorporate into your drawings; again, I'm sure that if you can satisfy and Ad-Hoc committee, it'll satisfy the entire commission, that's my feelings.

John Brady: Madame Chair, I have one technical question.

Linda Rogers: Go ahead.

John Brady: I've heard the issues with Parcel A. They're here on 2 separate things tonight. Are there as many issues on Parcel B that would cause it not to be able to be approved tonight? The only big issue on Parcel B was they needed to sketch in one more parking spot, and they need to do a little bit of specific, and with that compliance, you may be able to resolve Parcel B tonight and send Parcel A to the Ad-Hoc committee to be resolved.

Louise Frey: I have a question about that goes into Parcel B as well, that's why I asked if we were going to discuss landscaping. When you put a berm in, where is the berm measured from, 2' from what?

Bob Kerr: Existing grade.

John Brady: Existing grade and I believe under the zoning code the existing grade is from the center of the road? Or am I thinking of Dewey? I've had 2 P & Z meetings in 3 days.

Louise Frey: So, if we were to say a 4' berm, we'd have to take away part of the curb and we'd have to take this and that, and it would really end up being yay high.

Bob Kerr: A 4' berm would probably be very steep, with very steep sides, or would have to encroach into parking areas or something like that to fit.

Louise Frey: There's somewhere in the minutes I read they referred to what's out there as a 2' berm now. I don't see much of a berm, I don't know about anybody else.

Ralph Larson: Well, correct me if I am wrong, but if we start messing with the berm that is there now, we're getting into a whole new drainage engineering issue, I don't know.

John Brady: Could be.

Bob Kerr: Doing something with the existing portion of the berm is very difficult because it would really effect drainage. It would really end up being...it would look more like a mound system that you see some people have behind their houses that...

Louise Frey: You know, I'm thinking like they, not that I expect them to do that, but the berm on Cave Neck Road is just really beautiful.

Bob Kerr: I'm not really sure which one you're referring to.

Louise Frey: It's not anything that's for here, but it's in Overlook and what a great job.

Bob Kerr: Where you have, and I would assume there is a pretty big setback to do that.

Louise Frey: Absolutely.

Bob Kerr: Typically when you are trying to hide a residential subdivision or something, you do sometimes put larger berms in.

Louise Frey: I'm not expecting a (??) in Overbrook, but certainly I don't understand where the 2' berm is today. As I said today, man I looked, and it's flat. So where's the berm?

Ralph: I do not know the height of the existing berm at this time. It was more or less 2' when it was constructed.

Dean: Yeah, that berm is flat now along that parcel B portion of Route 5 and so forth. I rode that whole, this whole property tonight before I came to the meeting. I rode around very carefully looking at all of these areas and I think it would possibly be fair to consider the aspect of a waiver on 10 parking lots and a waiver on the number of dumpsters in exchange for better landscaping and better care of the landscaping so that would be an easy solution to this if we can agree on that if not then maybe the Ad-Hoc committee is the way to go.

Ted Konokas: Linda, the question I have is seeing the unforeseen consequences of additional dumpsters that were needed behind Happy Harry's, with Plan B we might be able to accomplish something with tonight on building B. Have you taken in to the same concept that there may be a problem there and you need more dumpsters and then you will decrease parking spaces? You have a number of stores but you have 6 dumpsters behind them.

Ralph Larson: 2 on 1 building.

Ted Konokas: Now how many stores do you anticipate where they've had to share dumpsters or...

Ralph Larson: Well, on this parcel this could be anywhere from 1 to 3 stores.

Ted Konokas: Do you think 2 dumpsters will be fine or will we run into this problem later on? And if you can park a dumpster in a slot...?

Ralph Larson: I doubt that that parcel would be a high volume tenant like a Happy Harry's type, or Food Lion, where they are going to have that much and they'll have to share. A lot of times, typically a lot of the centers we've managed they're shared dumpsters; several tenants would share. I think the biggest problem with the dumpsters is the Happy Harry's and the Dollar General just generates a lot cardboard and a lot of trash.

Ted Konokas: And how about the other building, the smaller building? You have but one dumpster for that?

Ralph: 2 dumpsters. That building is about half the size.

Gene Steele: At the, I believe it was the concept meeting, and I also met with you one time outside P & Z, it was discussed that these probably would not be dumpsters but would be more of the small 100 gallon roll of things, just that they really wouldn't be a big dumpster...

Ralph Larson: For Parcel B or Parcel A?

Gene Steele: For both of these parcels I believe, was kinda thrown out but it may not be a dumpster because one of my comments was how are you going to be able to get a trash truck in to pick the dumpsters up?

Ralph Larson: I remember we talked about the wheel units. That's basically a smaller dumpster on wheels.

Gene Steele: Kinda like the residents in Milton use.

Ginny Weeks: No we use rubber for these on wheels.

Dean Sherman: But you've got a 12 x 24...

Ralph Larson: We've actually got a 24 x 12.

Dean Sherman: Probably almost this size of room.

Gene Steele: It seems like an effective way – dirty cans get dirtier and dirtier, it's just a lot of garbage cans. It doesn't seem to be reasonable or practical.

Louise Frey: If I may Linda, I think that one of the things we're most concerned with here is that basically the place out there for years has looked like hell. I mean, there's no other nice way to say it. And we want that fixed. You know, the conditions of the sidewalks, they're dirty; the curbs, their chipped; the plants running up and down are dying; and it just looks awful. We want it fixed. We want it to follow the...this council and the previous council adopted (??) living for a better livable Delaware and that's what they want to see. That is what the people want to see and we want to follow what the state has recommended and that's basically...if you came back and showed us how this was going to be cleaned up, every one of us would work our tails off to get you what you want. I don't think that is a misstatement is it?

Michael Filicko: I think that's very true.

Linda: Well, I think that he's also asked for direction and you know, behind Happy Harry's. What are we going to do to help him out behind Happy Harry's? Are you going to alleviate some parking? Are you going to let him have a few parking spaces for extra landscaping? He needs guidance as to what he can do to correct the situation back there.

Louise: Until we know what he needs to put back there, I don't know how. I don't know how many dumpsters he wants to put back there, or where he wants to located them or what he wants to do. Certainly there's more than ample parking to bargain with, absolutely. But we don't have a plan here to look at.

Gene Steele: I don't think there's a problem with eliminating some of the parking. There's a lot of parking out there. What Mr. Sherman said, I agree with him 100%. But on a plan, with dumpster, you propose those dumpster to be behind those stores. We just want to see, in black and white, exactly what it looks like; the way you propose them to be; and I think we came back with that...

Linda Rogers: Well, we have to tell him he can waive some of the parking, well although Mr. Brady said he could put them in parking spaces, but...

John Brady: Technically I said right now they could but that's the way I interpret the code.

Gene Steele: But rather than having you just stick them in a parking space, which Mr. Brady says is legal to do, show us on black and white the designated area. If you have to have six dumpsters back there, for the number client that you have, we understand that. But we just want to see it. Whatever plan you present to us, the only alternative we have to go back that it's not done right, we revert to those plans. We have to see it.

Scott Pinder: Ok, so could we establish the Ad-Hoc to have that preliminary, that interim discussion, because even we could put 6 dumpsters on there and put landscaping and put fencing, but if we wait for another month to come in here and 3 people don't like it, we will be going back to revise it again, so if we can agree that ok, this is where we want to see the dumpsters, this is what fencing you like, this is what landscaping we'd like to see behind the fencing and then we bring that to entire committee that helps speed the process and everybody's on the same page.

Bob Kerr: I have no problem with that.

Ralph Larson: Can we go back to council's, what he brought up regarding Parcel B?

Michael Filicko: I'm not comfortable voting.

Ginny Weeks: Not until we see better landscaping. I want to know about that, I mean if that's your 2' berm out there, that's not a 2' berm.

Ralph Larson: Well there's a landscaping plan, and I don't know what the plan shows, I'll assume there was a 2' berm there originally, and I guess the landscaping plan would show that now, I don't know.

Michael Filicko: It may have eroded from the...

Ralph Larson: If that's the case then it would have to be brought back to whatever the new landscaping plan is.

Louise Frey: You see how the berm...the reason I'm asking is see, the berm, here's the sidewalk, here's the road, it goes down and is this the berm? With the 2' (unintelligible), this low point, where's the, it's 2' above what?

John Brady: Grade. The grade is what the parking lot is and what the sidewalk is. If you go to the center of the berm, the center of the berm for a 2' berm is supposed to be 24" above the grade. The grade is defined by the code is what the walkway is, which is at grade, and what the parking lot is is at grade.

Louise Frey: I was just wondering what this little dip is here.

Ralph Larson: That's for drainage.

Dean Sherman: It seems like the issue's come down before, four major issues that are counted incorrectly or listed incorrectly. I think these should come down to fencing, landscaping, dumpsters, and parking spaces. I think that comes down to those four items, and if this committee tonight, or an Ad-Hoc committee, could get those items addressed with the developers, I think everything would be ready to go then.

Ginny Weeks: I would like to get signage in there too. Are they going to have the same type of sign that's there now – the marketing sign – or is going to be on the building or what's it going to be?

Dean Sherman: Is that what you were referring to also, Bob?

Bob Kerr: You show one of the items, one of the items is to show new signage...

John Brady: If any is going to be required.

Bob Kerr: If any new sign.

Ralph Larson: Not building signs, but signs like...

Bob Kerr: Free standing signs.

Scott Pinder: Right. That will be addressed.

Gene Steele: Like entrance signs.

Bob Kerr: Yes

Michael Filicko: Bob, are you available?

Dean Sherman: What do you need from us?

Ralph Larson: We'll get out of your hair soon. But what I'm hearing though is that all the concerns you have on Parcel A, you don't want to talk about Parcel B until we've addressed these concerns, is that what I am hearing?

Bob: Yes.

Louise: That's exactly what you hear. I mean, we can differentiate what landscaping, etc., from Parcel A to Parcel B. It's all one continuum.

(Too many protesting comment to respond.)

John Brady: Legally, I'm sorry to interrupt, as Town Solicitor I have to hear. You have two separate under-businesses although as one applicant, there are two separate parcels and you'll need to make a motion on each Parcel No. as identified in here. Conditions on one parcel cannot be carried over and if they were to take a review of a decision that says we are not going to deal with Parcel B until you deal with Parcel A, under the (??) of discretion standard, we may lose in court. I need you to be mindful of that and that cannot be the basis for you not to consider one application because you want to suspend it until you've dealt with the other application when they are both filed by the same people, because they are two separate tax parcels. It was approved for subdivision. It was subdivided and it was properly approved and recorded and that would be an (?? – 8:31)) of discretion standard and judicial review of that would probably not be favorable to block any discussion of one thing because we hadn't dealt with the other on an adjacent parcel, and they would not look favorable to the, because it's visually one, that argument won't fly legally. I'm sorry.

Louise Frey: But if the irrigation etc. is part of this in the landscaping when we are talking about parking etc. and so on...

Linda Rogers: We are not talking about parking and Parcel B though, correct?

Ralph Larson: There's one space...

John Brady: One space. They are not asking for a waiver.

Linda Rogers: That can be added?

John Brady: They add on space because the way they drew it in Parcel B. There's enough space there for one additional item. The only big item for Parcel B that you discussed that came up was access through the berm near the intersection of 16 and 5 for pedestrian traffic to get into from across the street from downtown per say. To get through, it's in walking in one of the entrances.

Ginny Weeks: Can they do that Bob, without using either of the parking spots on either side?

Ralph Larson: I think the easy answer is yes, there are ways of doing it. It's not easy but yes, it can be done.

Michael Filicko: Mr. Brady, if Parcel B came up for a vote tonight, and we voted against it, could we be taken to court?

Linda Rogers: We would be wise not to vote against it. I mean, if you don't want to act on it, you would be more wise to defer, to table it.

John Brady: Just table it.

Linda Rogers: I mean there is no reason to vote against it, it's just you're not ready to approve it. So you would just want to table it.

John Brady: But, the reason you cite that we're not going to take of B instead of A, that reason wouldn't fly, so you would have to discuss a different why. Reasons you could discuss is if you would like to see the additional parking spot done; you would like to see

then entrance through the berm; or the parking for the sidewalk connecting into the parking lot to go to the 16 & 5 intersection and that that may need to reallocate a parking spot or two to have a sort of 5' walkway into the parking lot there. They're reasons that are legally sustainable; a reason saying that we are not going to do this because we are not happy with A and visually we think it is one would not be legally sustainable.

Michael Filicko: Well, what you just said is I am in total agreement.

Tom Kanokas (?): So even if two building share a common system, septic system or irrigation system, they have to be considered separate?

John Brady: No. Because they have two separate tax numbers and the parcels were subdivided, and that subdivision was approved by Town Council, you have to, as a matter of law, consider them separately. At one point this was all one parcel and had one, it was one parcel at that point and then everything was in play. When Council approved the subdivision, that's when you have to look at things as Parcel A and Parcel B and for clarity, the next time this comes up, it has to be a separate subsection A and a separate subsection B, each reflecting the same wording but to different tax numbers, where you break it off after the 68.00. Not something you submitted, I'm talking about the agenda. And then do a B applicant requesting preliminary site plan approval for on Parcel 2-35-14.15-68.01. It looks like its all one thing here and technically it's two separate ones.

Ralph Larson: To simplify things here a little bit. This technically could be two property owners. This could be a totally different property owner and...

Linda Rogers: Just like the bank is a separate property owner.

Ralph Larson: You couldn't hold this property owner to something you want done on this property.

Linda Rogers: Exactly.

Ralph Larson: And here again, I'm here to work with you. But I mean that's a technical issue.

Dean Sherman: So an Ad-Hoc committee, let's say, would have to address each of these parcels on their own merit individually, number one? And number two, we have these pretty clearly defined 4 areas – fences, landscaping and irrigation, dumpsters and parking spaces – that seem to be coming up and three, I think that Mr. Kerr's comments on the plan are a great beginning for the discussions of such a committee, he's done quite an excellence of going through the plans and making a lot of detailed notes about the plans.

Michael Filicko: So, ladies and gentlemen, do we propose an Ad-Hoc committee or a workshop?

Linda Rogers: Which way would the committee prefer to go? Would you prefer to have an Ad-Hoc committee and have 3 volunteers to participate on this committee which Mr. Brady tells us is legal to do? Or would the entire commission prefer to have a workshop and all of us work with the people together? Which way would you prefer to go?

Louise Frey: I personally would prefer a workshop.

Michael Filicko: I would prefer a workshop also.

Linda Rogers: With the entire commission?

Louise Frey: Whoever wants to come.

Bob Kerr: With the entire commission, because the Ad-Hoc could make it do all this work, come back to the full body, and there could still be a hitch in a get-along and that would make me uneasy cause...

Linda Rogers: So the commission is going to have a consensus to have a workshop to work with these people in reference to what we can do to get them moving forward and get the town a product that they would like to have that they're proud of. Correct?

Louise Frey: Yes.

Linda Rogers: Ok. So let's pick a date.

Louise Frey: Could I request that the city engineer be there?

Linda Rogers: Oh yes, he'll be there, Mr. Brady will be there. Don't worry, when we pick a date...

Bob Kerr: What's the earliest possible date we can do this?

John Brady: A week and a day. We are required by the Freedom of Information Act to give 7 days notice and that would be with the earliest it could be tomorrow morning so it would have to be 7 days from tomorrow. So it could be as early as next Wednesday.

Michael Filicko: I would like it to be on a Tuesday.

Bob Kerr: That would be May 1<sup>st</sup>.

John Brady: I guess we want May 7<sup>th</sup>.

Scott Pinder: If I may interject.

Bob Kerr: That becomes a problem with making the next months impossible.

John Brady: Because you are set for May 15<sup>th</sup>.

Louise Frey: Do they have to...the next meeting would be the third Tuesday in May, correct?

John Brady: Which is early next month, May 15<sup>th</sup>.

Louise Frey: But after the workshop, they should be able to go and quickly re-do the maps and come back?

Bob Kerr: But they would have to have it submitted before the first of the month in order for time for reviews.

Michael Filicko: We've live with what is out there for several years now, and I am not certainly going to rush into anything. I wan this to be done correctly and that's how I feel, and if it an extra month, so be it. If it takes an extra two months, that's how it's going to have to be. I want it to be done right.

John Brady: Robin, is there anything filed for the May 15<sup>th</sup> meeting yet?

Robin Davis: It's probably going to be Shipbuilders.

John Brady: Ok. Then let me tell you this right now. I'll be in Nashville, TN on May 15<sup>th</sup>. Enjoy. Since you wanted to deal with that items before, there's nothing that prohibits you and I've told the Mayor that May is a bad month for me. But, I am doing some make-up meetings, if you want to do it Tuesday, May 29<sup>th</sup>, I can be here.

Linda Rogers: Is that Board of Adjustment? No, that's not, it's before that.

John Brady: This is the 5<sup>th</sup> Tuesday in May, that if you wanted to meet on May 1<sup>st</sup>, which I'm here for, for workshop, and not have the May 15<sup>th</sup> meeting, and schedule everything for May 29<sup>th</sup>, you could do that. I'm sorry.

Linda Rogers: It doesn't matter to me.

Robin Davis: There was something already going on May 29<sup>th</sup>.

Linda Rogers: What? That Tuesday?

Robin Davis: There was a discussion in George's office about a possible re-zone.

John Brady: A Council meeting. That hasn't been approved yet, so if this got set before that, then that would trump this.

Linda Rogers: That would trump this or this would trump that? If we set ours first?



John Brady: If you set yours first, then you got the date.

Linda Rogers: We got the date.

Bob Kerr: Then let's do it.

Linda Rogers: Ok, so we are going to have a workshop meeting with these people on May 1<sup>st</sup>, which is a Tuesday?

Scott Pinder: To continue, I would probably have to have, I will have somebody from my office fill in for me, because I will be out of the country from the 30<sup>th</sup> until the 8<sup>th</sup>, unfortunately.

Bob Kerr: So you'll have somebody?

Scott Pinder: Yes. I will be in the Bahamas.

Linda Rogers: And then we will reschedule our regular P & Z meeting to be held on Tuesday, May 29<sup>th</sup> rather than Tuesday May 15<sup>th</sup>?

John Brady: At 7pm. If Council wants to do something, I'll do it at 6.

Ralph Larson: Now what time May 1<sup>st</sup>?

Linda Rogers: 7

Ralph Larson: 7 o'clock here?

Linda Rogers: Yes. I guess here if we get the library, correct? Are we all in agreement with that?

Michael Filicko: That sounds like a great idea.

Louise Frey: There's one other thing we have to do, we have to look at if we are going to have a workshop, we have to post an agenda. Is the public going to be able to speak.

Linda Rogers: Not at a workshop.

John Brady: Not at a workshop. There is no public comment at a workshop.

Linda Rogers: It will be limited to the applicant and their representatives and the board, correct?

John Brady: Correct. It's discussion and there will be no votes at a workshop.

Louise Frey: I just wanted to make sure that everyone in the public knows that no public comment.

Linda Rogers: Ok. Good with that? Ok. Is there anything else to discuss. If not, I'll entertain a motion to adjourn.

Michael Filicko: So moved.

Linda Rogers: Second.

Louise Frey: Second.

Linda Rogers: Moved and Second. We're adjourned.